HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT APPEAL No.519 of 2007

Between:

Katra Kotamma & another

… Appellants

AND

The Special Commissioner of Land Revenue,
Hyderabad & others

… Respondents

; JUDGMENT :

Counsel for the appellants : Shri V.Mallik

Counsel for respondents : Government Pleader
For Revenue

Dated: 30th July, 2007

Per C.V.NAGARJUNA REDDY, J.

Having failed to convince the learned Single Judge to quash the orders passed by respondent No.1 by which he confirmed the order passed by respondent No.2 whereunder assignment made in favour of appellant No.1 for an extent of Ac.2.38 cents of land in Survey No.634/D2 and 634/E2 was cancelled, appellant No.2 filed the present appeal.

For convenience, the parties are referred to as they are arrayed in the writ petition. Petitioner No.1 was assigned an extent of Ac.2.38 cents in Survey No.634/2B to E of Sarangapally village, Dachepalli Mandal, Guntur district. When it was found that her husband Pitchaiah was already assigned an extent of Ac.4.83 cents of land and that the land assigned to petitioner No.1 forms part of an extent of Ac.4.33 cents which was part of a tank, proceedings were initiated for cancellation of assignment. Similar proceedings were initiated against three other assignees who were assigned different extents of land forming part of the tank. A perusal of the record reveals that the assignment in favour of petitioner No.1 and other similarly situated persons who were assigned the tank land was cancelled by respondent No.2 vide his proceedings dated 24.9.1989. Petitioner No.1 filed W.P.No.15100 of 1989 in this court questioning the order of cancellation of assignment. The said writ petition was disposed of at the admission stage wherein she was permitted to file an appeal and her eviction was stayed till the disposal of the appeal. Respondent No.1 before whom the appeal was filed disposed of the same vide his

order dated 25.10.1989 by remanding the case to respondent No.2 for holding a de novo enquiry. After remand, respondent No.2 issued a show cause notice on 5.3.1990 to Petitioner No.1 and after considering her reply, he passed orders on 27.1.1991 cancelling the assignment made in her favour in respect of Ac.2.38 cents in Survey No.634/D2 and 634/E2. Petitioner No.1 filed appeal against the said order before respondent No.1 and the said appeal was dismissed by him vide his proceedings dated 19.9.1996. Assailing the said order, petitioner No.1 filed Writ Petition No.21920 of 1996 which was dismissed by the learned Single Judge. During the pendency of the writ petition, petitioner No.1 died and appellant No.2 brought himself on record as petitioner No.1 as the legal heir of the deceased petitioner and he filed this writ appeal against the said order passed in Writ Petition No.21920 of 1996.

Heard Sri V.Mallik, learned counsel for the appellant (petitioner No.2) and the learned Government for Revenue for the respondents.

A reading of show cause notice dated 5.3.1990 shows that the family members of petitioner No.1, namely, her husband Pitchaiah, her son Saidulu and her daughter-in-law Lalithamma were assigned different extents of land totalling to Ac.8.97 cents. In addition to the said lands, petitioner No.1 was assigned Ac.2.38 cents which forms part of a tank. In the explanation filed by her before respondent No.2, petitioner No.1 took the plea that she had been living separately having got divided from the family long back and, therefore, she is not concerned with the assignment made in favour of her other family members. Respondent No.2 after considering the said explanation and his personal inspection of the land in dispute, passed a detailed order on 27.1.1991. In his order, respondent No.2 held that the extent of Ac.4.33 cents is part of a tank which was completely levelled and

made to lose its utility as a tank. He further found that the other three assignees of the tank land were eligible for assignment and confirmed the assignment made in their favour in view of his observation that in view of the levelling of the tank bed, it lost its utility. However, as regards assignment made in favour of petitioner No.1, respondent No.2 cancelled the same on the ground that her other family members, namely, husband, son and daughter-in-law having already been assigned an extent of Ac.8.97 cents of land, there was no justification for permitting the writ petitioner to enjoy the extent of Ac.2.38 cents assigned in her favour. Respondent No.2 also disbelieved the version of petitioner No.1 that she was living separately and rejected her contention that the assignment made in favour of her other family members cannot be taken into consideration.

Respondent No.1, vide his order by which he dismissed the appeal filed by petitioner No.1, also considered the facts in detail and affirmed the view taken by respondent no.2. He held that the intendment of assignment is to provide source of livelihood to the landless poor persons and if every member of a family is assigned land, the very purpose of assignment will be defeated.

The learned Single Judge upheld the orders passed by respondents 1 and 2 by agreeing with their views.

Sri V.Mallik submitted that as petitioner No.1 was living separately, the respondents were not justified in considering the assignments made in favour of her husband, son and daughter-in-law as a ground to cancel the assignment made in favour of petitioner No.1.

We have considered this submission, but have not felt persuaded to accept the same. The Government framed policy of assignment under the Board Standing Orders ('BSO' for short).

According to this policy “landless poor persons” constitute one category who are entitled to assignment of land. The term “landless poor person” is defined under para 2(ii) of BSO as a person not having more than 2 ½ acres of wet land or five acres of dry land. Under Note 2 to para-2, the share of each member of a joint family shall be taken into consideration while determining whether a person is a landless poor person or not. It is not in dispute that petitioner No.1’s husband, son and daughter-in-law were assigned lands of a total extent of Ac.8.97 cents in the same village. In the face of this in-controvertible fact, she was clearly ineligible for further assignment as she cannot be considered to be landless poor person. So long as she was not legally separated from her husband, her status as an individual, without considering the holding of her husband, who together constitute a single family, cannot be recognized. Evidently, in order to save the assignment made in her favour, petitioner No.1 had come up with the plea that she was living separately. Both respondents 1 and 2 having considered this plea did not give credence to the same in the absence of any material to show that she was legally separated from her husband. We are entirely in agreement with the reasoning of respondent No.1 that if each member of a family is assigned lands, the whole purpose of providing land by way of assignment in favour of landless poor persons in the villages will be rendered otiose. The view taken by respondents 1 and 2 is unexceptionable and the learned Single Judge has rightly declined to interfere with the well considered orders of respondents 1 and 2. We do not, therefore, see any error patent on record in the order of the learned Single Judge warranting our interference while exercising Letters Patent jurisdiction.

For the reasons aforementioned, the appeal fails and is accordingly dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.(SR) No.131208 of 2007 is also dismissed.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 30-07-2007.
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